

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-publication of Notice Statement)

Section 7.50 (b)(180)  
Title 14, California Code of Regulations  
Re: Smith River

- I. Date of Initial Statement of Reasons: April 10, 2004
- II. Dates and Locations of Scheduled Hearings:
- |     |                                |           |               |
|-----|--------------------------------|-----------|---------------|
| (a) | Notice Hearing:                | Date:     | April 2, 2004 |
|     |                                | Location: | Sacramento    |
| (b) | Discussion/Adoption<br>Hearing | Date:     | June 24, 2004 |
|     |                                | Location: | Crescent City |
- III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Current sport fishing regulations for the Smith River in the reaches of: a) the main stem from the mouth to the confluence with the Middle and South forks, b) the Middle Fork from the mouth to Patrick Creek, 3) the South Fork from the mouth to Jones Creek, and the North Fork from the mouth to Stony Creek restrict the type of gear to artificial lures with barbless hooks from the fourth Saturday in May through October 31. The use of bait with barbless hooks is allowed only from November 1 through March 31. The use of barbed hooks is prohibited all year.

This proposal recommends regulation changes for the Smith River that would allow the use of bait with barbless hooks for two additional months during September and October within the four reaches identified above.

**Background**

Members of the public recommended regulation changes on the Smith River that included the following verbatim recommendations:

1. "Change the bait closure from April 30 to September 1. Currently bait is not allowed from November through March 31. Allowing bait September 1 would allow baitfish to be used in the estuary for the troll and anchor fishing in September and

October”.

2. “Change the closure date for steelhead from March 31 to April 30 each year from the mouth to the main stem confluence of South Fork and the Middle Fork (Smith River). This would allow fishing for steelhead below the confluence and also allow fishing for cutthroat trout prior to the opening at the end of May”.

3. “Change the barbless hook regulation to allow barbed hooks from September 1 to April 30. This regulation would eliminate a hardship in enforcement and allow concentration of harsher violations. Various studies reported in the literature indicate that there is no significant difference in the mortality rate of steelhead or salmon during the use of barbed vs. barbless hooks. Oregon eliminated their barbless hook regulation after such data were presented”.

The Department’s fisheries management and wildlife protection staffs met with Ms. Val, Mr. Gary Early, and Mr. Chuck Blackburn, Del Norte Supervisor on April 2, 2004 to discuss the regulation proposals. Department staff concurred with the applicant’s proposal for the use of bait in September and October, but rejected the proposals for the use of barbed hooks and extending the sport season from March 31 to April 30.

The Department and NOAA Fisheries support a steelhead management strategy that provides for the protection of listed or sensitive steelhead trout resources, while maintaining Chinook salmon and steelhead fisheries in streams north of the Russian River. Harvest of coho and wild steelhead are prohibited throughout the State, except wild steelhead may be taken in the Smith River (one per day, no more than five per year).

**Analysis of extending the period when bait is allowed:**

The use of bait is currently allowed in the Smith River from November 1 through March 31, but regulations do not provide for its use during the months of September and October, when Chinook salmon enter the Smith River estuary. Department staff concurs with the proposed regulation change because it would provide for a more diverse fishery and increase angling opportunity for Chinook salmon in the Smith River while continuing to protect all listed species. Creel census data during the years of 1997 through 2002 indicate zero coho salmon and very few steelhead were observed in angler catches prior to November. Based on these data the Department concludes that allowing the use of bait during September and October does not create additional risk to listed species. In addition, the Smith River upstream of the estuary reach is rarely open prior to November due to the Department’s low flow management regulation which is implemented from October 1 through January.

**Analysis of extending the fishing season through April:**

Fishing is currently permitted on the Smith River from the fourth Saturday in May through March 31. This regulation change proposes to extend the fishing season in the main stem Smith River below the Middle and South forks from March 31 to April

30. This regulation change is inconsistent with steelhead fishing seasons in most North Coast anadromous streams. The Department acknowledges that extending the season would potentially provide some additional angling opportunity for coastal cutthroat trout, but the proposal also identified a longer steelhead season. The steelhead fishery is primarily over by the end of March on the Smith River. Additionally, Friends of Del Norte recommended closure of the entire Smith River from April 1 through Memorial Day in 1997; hence there is no consensus among Smith River anglers for this regulation change.

Salmon and steelhead juveniles migrate to the ocean in April and May and extending the season through April increases the potential risk of incidental hooking mortality of coho and steelhead emigrants. In addition, the regulation change is not consistent with the Department's steelhead management agreement with NOAA Fisheries. Consequently, the Department does not support this recommendation.

**Analysis of allowing the use of barbed hooks:**

Current regulations permit only the use of barbless hooks in anadromous waters of the Northern Coast Fishing District, including the Smith River. A change in this regulation would alter the efforts taken by the Department in 2002 to simplify and apply consistent hook regulations throughout the State. More importantly, the regulation change is not consistent with the Department's steelhead management agreement with NOAA Fisheries. Consequently, the Department does not support this recommendation.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 205, 215, 220, 315 and 316.5, Fish and Game Code.  
Reference: Sections 200, 205, 206, 215 and 316.5, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change: None

(d) Identification of Reports or Documents Supporting Regulation Change: None

(e) Public Discussions of Proposed Regulations Prior to Notice publication:

|                 |           |                |
|-----------------|-----------|----------------|
| Public Meeting: | Date:     | March 25, 2004 |
|                 | Location: | Crescent City  |

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change: None

(b) No Change Alternative:

A no-change alternative would prevent increased fishing opportunities and a more diverse fishery for Chinook salmon in the Smith River.

(c) Consideration of Alternatives: None

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses compete with businesses other states.  
The proposed regulation provides additional fishing opportunities and is likely to have a positive affect on local businesses.
- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:  
  
The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is required

to be reimbursed under Part 7 (commencing with Section 17500) of Division 4:  
None.

(h) Effect on Housing Costs: None.

### **Informative Digest/Policy Statement Overview**

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This proposal recommends regulation changes for the Smith River that would allow the use of bait with barbless hooks for two additional months during September and October within the four river reaches identified above.

The proposed regulation change would provide for a more diverse fishery and increase angling opportunity for Chinook salmon in the Smith River while continuing to protect sensitive species. Creel census data during the years of 1997 through 2002 indicate zero coho salmon and very few steelhead were observed in angler catches prior to November. Based on these data, the Department concludes that allowing the use of bait during September and October does not create additional risk to listed species. In addition, the Smith River upstream of the estuary reach is rarely open prior to November due to the Department's low flow management regulation which is implemented from October 1 through January.